Supreme Court, U.S.
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ALEXANDER L. STEVAS
CLERK

NO. 84-706

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1984

THOMAS LARSON, Individually and as Secretary of the Pennsylvania Department of Transportation; JOHN HARHIGH, Individually and as Director of the Bureau of Human Resources; ROBERT ROWLAND, Individually and as Engineer, Engineering District 6-0; SAMUEL ARRIGO, Individually and as Maintenance Manager, Maintenance District 6-1, Bucks County; LOUIS O'BRIEN, Individually and as Director, Bureau of Maintenance; JOSEPH WADE, Individually and as Assistant District Engineer; HONORABLE RICHARD THORNBURGH, Individually and as Governor of the Commonwealth of Pennsylvania,

Petitioners

v.

FRANCIS W. FITZGERALD,

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

a. Does **Burnett v. Grattan**, No. 83-264, 52 U.S.L.W. 4916 (June 27, 1984) preclude application of a state's six-month statute of limitations to actions commenced under the federal Civil Rights Acts?

b. Must all civil actions commenced under the federal Civil Rights Acts be characterized the same for purposes of borrowing a state statute of limitations?

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SUMMARY OF ARGUMENT

This Court's recent decision in **Burnett v. Grattan** precludes the application of a six-month statute of limitations to this federal civil rights action.

Congress and this Court have consistently declined to inject uniformity into the characterization of federal civil rights actions for the purpose of borrowing a state statute of limitations. Each case is unique and must be characterized on its own facts.

ARGUMENT

1. This Court's Recent Decision In **Burnett v. Grattan**, No. 83-264, 52 U.S.L.W. 4916 (June 27, 1984) Compels Rejection Of This Petition For Writ Of Certiorari.

Burnett squarely **held** that Maryland's six-month statute of limitations for filing employment discrimination complaints with the state Human Affairs Commission could not be applied to actions brought pursuant to the Civil Rights Acts. The crux of that holding was this Court's recognition that federal law places a "substantial burden" on a civil rights litigant to prepare, plead and prove his or her case. **Burnett, supra**, 52 U.S.L.W. at 4919. This Court also noted that "The [six-month] time limit . . . does not correspond in any significant way to th[is] substantial burden . . .." **Id.**

Knoll v. Springfield Township School District, 699 F.2d 137 (3rd Cir. 1982), **cert. granted**, No. 83-1889 (July 2, 1984) correctly applied established precedent and anticipated the rationale recognized in **Burnett**. As a matter of law, a six-month statute of limitations cannot be applied to federal civil rights actions. **Burnett** is controlling and compels rejection of this Petition for Writ Of Certiorari.

2. The Granting Of The Writ Of Certiorari In **Garcia v. Wilson**, No. 83-2146, **cert. granted**, (October 1, 1984) Does Not Compel The Granting Of This Petition For Writ Of Certiorari.

In **Garcia v. Wilson**, 731 F.2d 640 (10th Cir. 1984) (**en banc**), the Court of Appeals for the Tenth Circuit concluded "that **every** section 1983 claim is in essence an action for injury to personal rights", and therefore "all section

1983 claims in [the Tenth] circuit will be **uniformly** so characterized for statute of limitations purposes." 731 F.2d at 651. (emphasis added).

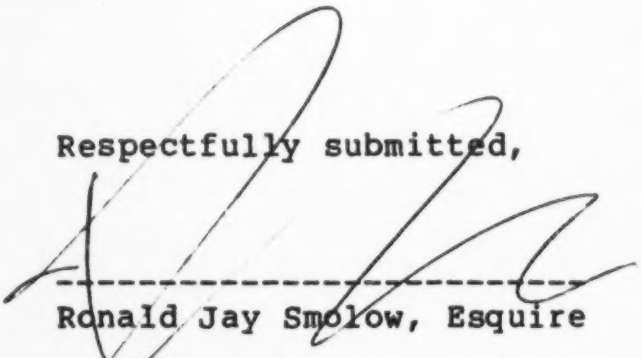
This analysis is expressly contrary to this Court's consistent recognition that Congress has declined to establish a uniform national approach in federal civil rights actions. **Board of Regents v. Tomanio**, 446 U.S. 478, 489 (1980); **Robertson v. Wegmann**, 436 U.S. 584, 593 n.11 (1978); **see Burnett, supra**, 52 U.S.L.W. at 4921 (opinion concurring in judgment only). Surely the refusal to serve a business patron solely on the grounds of race is inherently different from the discharge of an employee solely on the grounds of political affiliation and must be characterized differently for the purpose of borrowing a state statute of limitations. The Tenth

Circuit in **Garcia** has attempted to inject uniformity into federal civil rights actions when Congress and this Court have declined to do so. The granting of the Writ of Certiorari in **Garcia** is no reason to grant a Writ in this case. Rather, established precedent suggests otherwise.

CONCLUSION

Petitioner has failed to present this Court with any reasons sufficient to grant a Writ of Certiorari. Rather, the lower court correctly applied the established precedent of this Court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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